

108TH CONGRESS
2D SESSION

S. 2273

AN ACT

To provide increased rail transportation security.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Rail Security Act of 2004”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Rail transportation security risk assessment.
- Sec. 3. Rail security.
- Sec. 4. Study of foreign rail transport security programs.
- Sec. 5. Passenger, baggage, and cargo screening.
- Sec. 6. Certain personnel limitations not to apply.
- Sec. 7. Fire and life-safety improvements.
- Sec. 8. Memorandum of agreement.
- Sec. 9. Amtrak plan to assist families of passengers involved in rail passenger accidents.
- Sec. 10. Systemwide Amtrak security upgrades.
- Sec. 11. Freight and passenger rail security upgrades.
- Sec. 12. Oversight and grant procedures.
- Sec. 13. Rail security research and development.
- Sec. 14. Welded rail and tank car safety improvements.
- Sec. 15. Northern Border rail passenger report.
- Sec. 16. Report regarding impact on security of train travel in communities without grade separation.
- Sec. 17. Whistleblower protection program.

3 **SEC. 2. RAIL TRANSPORTATION SECURITY RISK ASSESS-**
 4 **MENT.**

5 (a) IN GENERAL.—

6 (1) VULNERABILITY ASSESSMENT.—The Under
 7 Secretary of Homeland Security for Border and
 8 Transportation Security, in consultation with the
 9 Secretary of Transportation, shall complete a vulner-
 10 ability assessment of freight and passenger rail
 11 transportation (encompassing railroads, as that term
 12 is defined in section 20102(1) of title 49, United
 13 States Code). The assessment shall include—

14 (A) identification and evaluation of critical
 15 assets and infrastructures;

1 (B) identification of threats to those assets
2 and infrastructures;

3 (C) identification of vulnerabilities that are
4 specific to the transportation of hazardous ma-
5 terials via railroad; and

6 (D) identification of security weaknesses in
7 passenger and cargo security, transportation in-
8 frastructure, protection systems, procedural
9 policies, communications systems, employee
10 training, emergency response planning, and any
11 other area identified by the assessment.

12 (2) EXISTING PRIVATE AND PUBLIC SECTOR
13 EFFORTS.—The assessment shall take into account
14 actions taken or planned by both public and private
15 entities to address identified security issues and as-
16 sess the effective integration of such actions.

17 (3) RECOMMENDATIONS.—Based on the assess-
18 ment conducted under paragraph (1), the Under
19 Secretary, in consultation with the Secretary of
20 Transportation, shall develop prioritized rec-
21 ommendations for improving rail security, including
22 any recommendations the Under Secretary has for—

23 (A) improving the security of rail tunnels,
24 rail bridges, rail switching and car storage
25 areas, other rail infrastructure and facilities, in-

1 formation systems, and other areas identified
2 by the Under Secretary as posing significant
3 rail-related risks to public safety and the move-
4 ment of interstate commerce, taking into ac-
5 count the impact that any proposed security
6 measure might have on the provision of rail
7 service;

8 (B) deploying equipment to detect explo-
9 sives and hazardous chemical, biological, and
10 radioactive substances, and any appropriate
11 countermeasures;

12 (C) training employees in terrorism pre-
13 vention, passenger evacuation, and response ac-
14 tivities;

15 (D) conducting public outreach campaigns
16 on passenger railroads;

17 (E) deploying surveillance equipment; and

18 (F) identifying the immediate and long-
19 term costs of measures that may be required to
20 address those risks.

21 (4) PLANS.—The report required by subsection
22 (c) shall include—

23 (A) a plan, developed in consultation with
24 the freight and intercity passenger railroads,
25 and State and local governments, for the gov-

1 ernment to provide increased security support
2 at high or severe threat levels of alert; and

3 (B) a plan for coordinating rail security
4 initiatives undertaken by the public and private
5 sectors.

6 (b) CONSULTATION; USE OF EXISTING RE-
7 SOURCES.—In carrying out the assessment required by
8 subsection (a), the Under Secretary of Homeland Security
9 for Border and Transportation Security shall consult with
10 rail management, rail labor, owners or lessors of rail cars
11 used to transport hazardous materials, first responders,
12 shippers of hazardous materials, public safety officials (in-
13 cluding those within other agencies and offices within the
14 Department of Homeland Security), and other relevant
15 parties.

16 (c) REPORT.—

17 (1) CONTENTS.—Within 180 days after the
18 date of enactment of this Act, the Under Secretary
19 shall transmit to the Senate Committee on Com-
20 merce, Science, and Transportation and the House
21 of Representatives Committee on Transportation
22 and Infrastructure a report containing the assess-
23 ment and prioritized recommendations required by
24 subsection (a) and an estimate of the cost to imple-
25 ment such recommendations.

1 (2) **FORMAT.**—The Under Secretary may sub-
 2 mit the report in both classified and redacted for-
 3 mats if the Under Secretary determines that such
 4 action is appropriate or necessary.

5 (d) **2-YEAR UPDATES.**—The Under Secretary, in con-
 6 sultation with the Secretary of Transportation, shall up-
 7 date the assessment and recommendations every 2 years
 8 and transmit a report, which may be submitted in both
 9 classified and redacted formats, to the Committees named
 10 in subsection (c)(1), containing the updated assessment
 11 and recommendations.

12 (e) **AUTHORIZATION OF APPROPRIATIONS.**—There
 13 are authorized to be appropriated to the Under Secretary
 14 of Homeland Security for Border and Transportation Se-
 15 curity \$5,000,000 for fiscal year 2005 for the purpose of
 16 carrying out this section.

17 **SEC. 3. RAIL SECURITY.**

18 (a) **RAIL POLICE OFFICERS.**—Section 28101 of title
 19 49, United States Code, is amended by striking “the rail
 20 carrier” each place it appears and inserting “any rail car-
 21 rier”.

22 (b) **REVIEW OF RAIL REGULATIONS.**—Within 1 year
 23 after the date of enactment of this Act, the Secretary of
 24 Transportation, in consultation with the Under Secretary
 25 of Homeland Security for Border and Transportation Se-

1 curity, shall review existing rail regulations of the Depart-
 2 ment of Transportation for the purpose of identifying
 3 areas in which those regulations need to be revised to im-
 4 prove rail security.

5 **SEC. 4. STUDY OF FOREIGN RAIL TRANSPORT SECURITY**
 6 **PROGRAMS.**

7 (a) REQUIREMENT FOR STUDY.—Within one year
 8 after the date of enactment of the Rail Security Act of
 9 2004, the Comptroller General shall complete a study of
 10 the rail passenger transportation security programs that
 11 are carried out for rail transportation systems in Japan,
 12 member nations of the European Union, and other foreign
 13 countries.

14 (b) PURPOSE.—The purpose of the study shall be to
 15 identify effective rail transportation security measures
 16 that are in use in foreign rail transportation systems, in-
 17 cluding innovative measures and screening procedures de-
 18 termined effective.

19 (c) REPORT.—The Comptroller General shall submit
 20 a report on the results of the study to the Senate Com-
 21 mittee on Commerce, Science, and Transportation and the
 22 House of Representatives Committee on Transportation
 23 and Infrastructure. The report shall include the Comp-
 24 troller General’s assessment regarding whether it is fea-
 25 sible to implement within the United States any of the

1 same or similar security measures that are determined ef-
2 fective under the study.

3 **SEC. 5. PASSENGER, BAGGAGE, AND CARGO SCREENING.**

4 (a) REQUIREMENT FOR STUDY AND REPORT.—The
5 Under Secretary of Homeland Security for Border and
6 Transportation Security, in cooperation with the Secretary
7 of Transportation, shall—

8 (1) analyze the cost and feasibility of requiring
9 security screening for passengers, baggage, and
10 cargo on passenger trains; and

11 (2) report the results of the study, together
12 with any recommendations that the Under Secretary
13 may have for implementing a rail security screening
14 program to the Senate Committee on Commerce,
15 Science, and Transportation and the House of Rep-
16 resentatives Committee on Transportation and In-
17 frastructure within 1 year after the date of enact-
18 ment of this Act.

19 (b) PILOT PROGRAM.—As part of the study under
20 subsection (a), the Under Secretary shall complete a pilot
21 program of random security screening of passengers and
22 baggage at 5 passenger rail stations served by Amtrak se-
23 lected by the Under Secretary. In conducting the pilot pro-
24 gram, the Under Secretary shall—

1 (1) test a wide range of explosives detection
2 technologies, devices and methods;

3 (2) require that intercity rail passengers
4 produce government-issued photographic identifica-
5 tion which matches the name on the passenger's
6 tickets prior to boarding trains; and

7 (3) attempt to give preference to locations at
8 the highest risk of terrorist attack and achieve a dis-
9 tribution of participating train stations in terms of
10 geographic location, size, passenger volume, and
11 whether the station is used by commuter rail pas-
12 sengers as well as Amtrak passengers.

13 (c) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to the Under Secretary
15 of Homeland Security for Border and Transportation Se-
16 curity to carry out this section \$5,000,000 for fiscal year
17 2005.

18 **SEC. 6. CERTAIN PERSONNEL LIMITATIONS NOT TO APPLY.**

19 Any statutory limitation on the number of employees
20 in the Transportation Security Administration of the De-
21 partment of Transportation, before or after its transfer
22 to the Department of Homeland Security, does not apply
23 to the extent that any such employees are responsible for
24 implementing the provisions of this Act.

1 **SEC. 7. FIRE AND LIFE-SAFETY IMPROVEMENTS.**

2 (a) LIFE-SAFETY NEEDS.—The Secretary of Trans-
 3 portation is authorized to make grants to Amtrak for the
 4 purpose of making fire and life-safety improvements to
 5 Amtrak tunnels on the Northeast Corridor in New York,
 6 NY, Baltimore, MD, and Washington, DC.

7 (b) AUTHORIZATION OF APPROPRIATIONS.—There
 8 are authorized to be appropriated to the Secretary of
 9 Transportation for the purposes of carrying out subsection
 10 (a) the following amounts:

11 (1) For the 6 New York tunnels to provide ven-
 12 tilation, electrical, and fire safety technology up-
 13 grades, emergency communication and lighting sys-
 14 tems, and emergency access and egress for
 15 passengers—

16 (A) \$100,000,000 for fiscal year 2005;

17 (B) \$100,000,000 for fiscal year 2006;

18 (C) \$100,000,000 for fiscal year 2007;

19 (D) \$100,000,000 for fiscal year 2008;

20 and

21 (E) \$170,000,000 for fiscal year 2009.

22 (2) For the Baltimore & Potomac tunnel and
 23 the Union tunnel, together, to provide adequate
 24 drainage, ventilation, communication, lighting, and
 25 passenger egress upgrades—

26 (A) \$10,000,000 for fiscal year 2005;

- 1 (B) \$10,000,000 for fiscal year 2006;
- 2 (C) \$10,000,000 for fiscal year 2007;
- 3 (D) \$10,000,000 for fiscal year 2008; and
- 4 (E) \$17,000,000 for fiscal year 2009.

5 (3) For the Washington, DC Union Station
 6 tunnels to improve ventilation, communication, light-
 7 ing, and passenger egress upgrades—

- 8 (A) \$8,000,000 for fiscal year 2005;
- 9 (B) \$8,000,000 for fiscal year 2006;
- 10 (C) \$8,000,000 for fiscal year 2007;
- 11 (D) \$8,000,000 for fiscal year 2008; and
- 12 (E) \$8,000,000 for fiscal year 2009.

13 (c) INFRASTRUCTURE UPGRADES.—There are au-
 14 thorized to be appropriated to the Secretary of Transpor-
 15 tation for fiscal year 2005 \$3,000,000 for the preliminary
 16 design of options for a new tunnel on a different alignment
 17 to augment the capacity of the existing Baltimore tunnels.

18 (d) AVAILABILITY OF APPROPRIATED FUNDS.—
 19 Amounts appropriated pursuant to this section shall re-
 20 main available until expended.

21 (e) PLANS REQUIRED.—The Secretary may not make
 22 amounts available to Amtrak for obligation or expenditure
 23 under subsection (a)—

1 (1) until Amtrak has submitted to the Sec-
 2 retary, and the Secretary has approved, an engineer-
 3 ing and financial plan for such projects; and

4 (2) unless, for each project funded pursuant to
 5 this section, the Secretary has approved a project
 6 management plan prepared by Amtrak addressing
 7 appropriate project budget, construction schedule,
 8 recipient staff organization, document control and
 9 record keeping, change order procedure, quality con-
 10 trol and assurance, periodic plan updates, periodic
 11 status reports, and such other matters the Secretary
 12 deems appropriate.

13 (f) REVIEW OF PLANS.—The Secretary of Transpor-
 14 tation shall complete the review of the plans required by
 15 paragraphs (1) and (2) of subsection (e) and approve or
 16 disapprove the plans within 45 days after the date on
 17 which each such plan is submitted by Amtrak. If the Sec-
 18 retary determines that a plan is incomplete or deficient,
 19 the Secretary shall notify Amtrak of the incomplete items
 20 or deficiencies and Amtrak shall, within 30 days after re-
 21 ceiving the Secretary's notification, submit a modified
 22 plan for the Secretary's review. Within 15 days after re-
 23 ceiving additional information on items previously included
 24 in the plan, and within 45 days after receiving items newly
 25 included in a modified plan, the Secretary shall either ap-

1 prove the modified plan, or, if the Secretary finds the plan
 2 is still incomplete or deficient, the Secretary shall identify
 3 in writing to the Senate Committee on Commerce, Science,
 4 and Transportation and the House of Representatives
 5 Committee on Transportation and Infrastructure the por-
 6 tions of the plan the Secretary finds incomplete or defi-
 7 cient, approve all other portions of the plan, obligate the
 8 funds associated with those other portions, and execute
 9 an agreement with Amtrak within 15 days thereafter on
 10 a process for resolving the remaining portions of the plan.

11 (g) FINANCIAL CONTRIBUTION FROM OTHER TUN-
 12 NEL USERS.—The Secretary shall, taking into account the
 13 need for the timely completion of all portions of the tunnel
 14 projects described in subsection (a)—

15 (1) consider the extent to which rail carriers
 16 other than Amtrak use the tunnels;

17 (2) consider the feasibility of seeking a financial
 18 contribution from those other rail carriers toward
 19 the costs of the projects; and

20 (3) obtain financial contributions or commit-
 21 ments from such other rail carriers at levels reflect-
 22 ing the extent of their use of the tunnels, if feasible.

23 **SEC. 8. MEMORANDUM OF AGREEMENT.**

24 (a) MEMORANDUM OF AGREEMENT.—Within 60 days
 25 after the date of enactment of this Act, the Secretary of

1 Transportation and the Secretary of Homeland Security
 2 shall execute a memorandum of agreement governing the
 3 roles and responsibilities of the Department of Transpor-
 4 tation and the Department of Homeland Security, respec-
 5 tively, in addressing railroad transportation security mat-
 6 ters, including the processes the departments will follow
 7 to promote communications, efficiency, and nonduplication
 8 of effort.

9 (b) RAIL SAFETY REGULATIONS.—Section 20103(a)
 10 of title 49, United States Code, is amended by striking
 11 “safety” the first place it appears, and inserting “safety,
 12 including security,”.

13 **SEC. 9. AMTRAK PLAN TO ASSIST FAMILIES OF PAS-**
 14 **SENGERS INVOLVED IN RAIL PASSENGER AC-**
 15 **CIDENTS.**

16 (a) IN GENERAL.—Chapter 243 of title 49, United
 17 States Code, is amended by adding at the end the fol-
 18 lowing:

19 **“§ 24316. Plans to address needs of families of pas-**
 20 **sengers involved in rail passenger acci-**
 21 **dents**

22 “(a) SUBMISSION OF PLAN.—Not later than 6
 23 months after the date of the enactment of the Rail Secu-
 24 rity Act of 2004, Amtrak shall submit to the Chairman
 25 of the National Transportation Safety Board and the Sec-

1 retary of Transportation a plan for addressing the needs
 2 of the families of passengers involved in any rail passenger
 3 accident involving an Amtrak intercity train and resulting
 4 in a loss of life.

5 “(b) CONTENTS OF PLANS.—The plan to be sub-
 6 mitted by Amtrak under subsection (a) shall include, at
 7 a minimum, the following:

8 “(1) A process by which Amtrak will maintain
 9 and provide to the National Transportation Safety
 10 Board and the Secretary of Transportation, imme-
 11 diately upon request, a list (which is based on the
 12 best available information at the time of the request)
 13 of the names of the passengers aboard the train
 14 (whether or not such names have been verified), and
 15 will periodically update the list. The plan shall in-
 16 clude a procedure, with respect to unreserved trains
 17 and passengers not holding reservations on other
 18 trains, for Amtrak to use reasonable efforts to ascer-
 19 tain the number and names of passengers aboard a
 20 train involved in an accident.

21 “(2) A plan for creating and publicizing a reli-
 22 able, toll-free telephone number within 4 hours after
 23 such an accident occurs, and for providing staff, to
 24 handle calls from the families of the passengers.

1 “(3) A process for notifying the families of the
2 passengers, before providing any public notice of the
3 names of the passengers, by suitably trained individ-
4 uals.

5 “(4) A process for providing the notice de-
6 scribed in paragraph (2) to the family of a pas-
7 senger as soon as Amtrak has verified that the pas-
8 senger was aboard the train (whether or not the
9 names of all of the passengers have been verified).

10 “(5) A process by which the family of each pas-
11 senger will be consulted about the disposition of all
12 remains and personal effects of the passenger within
13 Amtrak’s control; that any possession of the pas-
14 senger within Amtrak’s control will be returned to
15 the family unless the possession is needed for the ac-
16 cident investigation or any criminal investigation;
17 and that any unclaimed possession of a passenger
18 within Amtrak’s control will be retained by the rail
19 passenger carrier for at least 18 months.

20 “(6) A process by which the treatment of the
21 families of nonrevenue passengers will be the same
22 as the treatment of the families of revenue pas-
23 sengers.

24 “(7) An assurance that Amtrak will provide
25 adequate training to its employees and agents to

1 meet the needs of survivors and family members fol-
2 lowing an accident.

3 “(c) USE OF INFORMATION.—The National Trans-
4 portation Safety Board, the Secretary of Transportation,
5 and Amtrak may not release to any person information
6 on a list obtained under subsection (b)(1) but may provide
7 information on the list about a passenger to the family
8 of the passenger to the extent that the Board or Amtrak
9 considers appropriate.

10 “(d) LIMITATION ON LIABILITY.—Amtrak shall not
11 be liable for damages in any action brought in a Federal
12 or State court arising out of the performance of Amtrak
13 in preparing or providing a passenger list, or in providing
14 information concerning a train reservation, pursuant to a
15 plan submitted by Amtrak under subsection (b), unless
16 such liability was caused by Amtrak’s conduct.

17 “(e) LIMITATION ON STATUTORY CONSTRUCTION.—
18 Nothing in this section may be construed as limiting the
19 actions that Amtrak may take, or the obligations that Am-
20 trak may have, in providing assistance to the families of
21 passengers involved in a rail passenger accident.

22 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to the Secretary of
24 Transportation for the use of Amtrak \$500,000 for fiscal
25 year 2005 to carry out this section. Amounts appropriated

1 pursuant to this subsection shall remain available until ex-
 2 pended.”.

3 (b) CONFORMING AMENDMENT.—The chapter anal-
 4 ysis for chapter 243 of title 49, United States Code, is
 5 amended by adding at the end the following:

“Sec.

“24316. Plan to assist families of passengers involved in rail passenger acci-
 dents.”.

6 **SEC. 10. SYSTEMWIDE AMTRAK SECURITY UPGRADES.**

7 (a) IN GENERAL—Subject to subsection (c), the
 8 Under Secretary of Homeland Security for Border and
 9 Transportation Security is authorized to make grants,
 10 through the Secretary of Transportation, to Amtrak—

11 (1) to secure major tunnel access points and en-
 12 sure tunnel integrity in New York, Baltimore, and
 13 Washington, DC;

14 (2) to secure Amtrak trains;

15 (3) to secure Amtrak stations;

16 (4) to obtain a watch list identification system
 17 approved by the Under Secretary;

18 (5) to obtain train tracking and interoperable
 19 communications systems that are coordinated to the
 20 maximum extent possible;

21 (6) to hire additional police and security offi-
 22 cers, including canine units; and

23 (7) to expand emergency preparedness efforts.

1 (b) CONDITIONS.—The Secretary of Transportation
 2 may not disburse funds to Amtrak under subsection (a)
 3 unless the projects are contained in a systemwide security
 4 plan approved by the Under Secretary, in consultation
 5 with the Secretary of Transportation, and, for capital
 6 projects, meet the requirements of section 7(e)(2). The
 7 plan shall include appropriate measures to address secu-
 8 rity awareness, emergency response, and passenger evacu-
 9 ation training.

10 (c) EQUITABLE GEOGRAPHIC ALLOCATION.—The
 11 Under Secretary shall ensure that, subject to meeting the
 12 highest security needs on Amtrak’s entire system, stations
 13 and facilities located outside of the Northeast Corridor re-
 14 ceive an equitable share of the security funds authorized
 15 by this section.

16 (d) AVAILABILITY OF FUNDS.—There are authorized
 17 to be appropriated to the Under Secretary of Homeland
 18 Security for Border and Transportation Security
 19 \$63,500,000 for fiscal year 2005 for the purposes of car-
 20 rying out this section. Amounts appropriated pursuant to
 21 this subsection shall remain available until expended.

22 **SEC. 11. FREIGHT AND PASSENGER RAIL SECURITY UP-**
 23 **GRADES.**

24 (a) SECURITY IMPROVEMENT GRANTS.—The Under
 25 Secretary of Homeland Security for Border and Transpor-

1 tation Security is authorized to make grants to freight
 2 railroads, the Alaska Railroad, hazardous materials ship-
 3 pers, owners of rail cars used in the transportation of haz-
 4 ardous materials, universities, colleges and research cen-
 5 ters, State and local governments (for passenger facilities
 6 and infrastructure not owned by Amtrak), and, through
 7 the Secretary of Transportation, to Amtrak, for full or
 8 partial reimbursement of costs incurred in the conduct of
 9 activities to prevent or respond to acts of terrorism, sabo-
 10 tage, or other intercity passenger rail and freight rail secu-
 11 rity threats, including—

12 (1) security and redundancy for critical commu-
 13 nications, computer, and train control systems essen-
 14 tial for secure rail operations;

15 (2) accommodation of cargo or passenger
 16 screening equipment at the United States-Mexico
 17 border or the United States-Canada border;

18 (3) the security of hazardous material transpor-
 19 tation by rail;

20 (4) secure intercity passenger rail stations,
 21 trains, and infrastructure;

22 (5) structural modification or replacement of
 23 rail cars transporting high hazard materials to im-
 24 prove their resistance to acts of terrorism;

1 (6) employee security awareness, preparedness,
2 passenger evacuation, and emergency response train-
3 ing;

4 (7) public security awareness campaigns for
5 passenger train operations;

6 (8) the sharing of intelligence and information
7 about security threats;

8 (9) to obtain train tracking and interoperable
9 communications systems that are coordinated to the
10 maximum extent possible;

11 (10) to hire additional police and security offi-
12 cers, including canine units; and

13 (11) other improvements recommended by the
14 report required by section 2, including infrastruc-
15 ture, facilities, and equipment upgrades.

16 (b) ACCOUNTABILITY.—The Under Secretary shall
17 adopt necessary procedures, including audits, to ensure
18 that grants made under this section are expended in ac-
19 cordance with the purposes of this Act and the priorities
20 and other criteria developed by the Under Secretary.

21 (c) EQUITABLE ALLOCATION.—The Under Secretary
22 shall equitably distribute the funds authorized by this sec-
23 tion, taking into account geographic location, and shall en-
24 courage non-Federal financial participation in awarding
25 grants. With respect to grants for passenger rail security,

1 the Under Secretary shall also take into account passenger
2 volume and whether a station is used by commuter rail
3 passengers as well as intercity rail passengers.

4 (d) CONDITIONS.—The Secretary of Transportation
5 may not disburse funds to Amtrak under subsection (a)
6 unless Amtrak meets the conditions set forth in section
7 10(b) of this Act.

8 (e) ALLOCATION BETWEEN RAILROADS AND OTH-
9 ERS.—Unless as a result of the assessment required by
10 section 2 the Under Secretary of Homeland Security for
11 Border and Transportation Security determines that crit-
12 ical rail transportation security needs require reimburse-
13 ment in greater amounts to any eligible entity, no grants
14 under this section may be made—

15 (1) in excess of \$65,000,000 to Amtrak; or
16 (2) in excess of \$100,000,000 for the purposes
17 described in paragraphs (3) and (5) of subsection
18 (a).

19 (f) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to the Under Secretary
21 of Homeland Security for Border and Transportation Se-
22 curity \$350,000,000 for fiscal year 2005 to carry out the
23 purposes of this section. Amounts appropriated pursuant
24 to this subsection shall remain available until expended.

1 (g) HIGH HAZARD MATERIALS DEFINED.—In this
 2 section, the term “high hazard materials” means poison
 3 inhalation hazard materials, Class 2.3 gases, Class 6.1
 4 materials, and anhydrous ammonia.

5 **SEC. 12. OVERSIGHT AND GRANT PROCEDURES.**

6 (a) SECRETARIAL OVERSIGHT.—The Secretary of
 7 Transportation may use up to 0.5 percent of amounts
 8 made available to Amtrak for capital projects under the
 9 Rail Security Act of 2004 to enter into contracts for the
 10 review of proposed capital projects and related program
 11 management plans and to oversee construction of such
 12 projects.

13 (b) USE OF FUNDS.—The Secretary may use
 14 amounts available under subsection (a) of this subsection
 15 to make contracts for safety, procurement, management,
 16 and financial compliance reviews and audits of a recipient
 17 of amounts under subsection (a).

18 (c) PROCEDURES FOR GRANT AWARD.—The Under
 19 Secretary shall prescribe procedures and schedules for the
 20 awarding of grants under this Act, including application
 21 and qualification procedures (including a requirement that
 22 the applicant have a security plan), and a record of deci-
 23 sion on applicant eligibility. The procedures shall include
 24 the execution of a grant agreement between the grant re-
 25 cipient and the Under Secretary. The Under Secretary

1 shall issue a final rule establishing the procedures not
2 later than 90 days after the date of enactment of this Act.

3 **SEC. 13. RAIL SECURITY RESEARCH AND DEVELOPMENT.**

4 (a) ESTABLISHMENT OF RESEARCH AND DEVELOP-
5 MENT PROGRAM.—The Under Secretary of Homeland Se-
6 curity for Border and Transportation Security, in conjunc-
7 tion with the Secretary of Transportation, shall carry out
8 a research and development program for the purpose of
9 improving freight and intercity passenger rail security that
10 may include research and development projects to—

11 (1) reduce the vulnerability of passenger trains,
12 stations, and equipment to explosives and hazardous
13 chemical, biological, and radioactive substances;

14 (2) test new emergency response techniques and
15 technologies;

16 (3) develop improved freight technologies,
17 including—

18 (A) technologies for sealing rail cars;

19 (B) automatic inspection of rail cars;

20 (C) communication-based train controls;

21 and

22 (D) emergency response training;

23 (4) test wayside detectors that can detect tam-
24 pering with railroad equipment; and

1 (5) support enhanced security for the transpor-
2 tation of hazardous materials by rail, including—

3 (A) technologies to detect a breach in a
4 tank car and transmit information about the in-
5 tegrity of tank cars to the train crew;

6 (B) research to improve tank car integrity,
7 with a focus on tank cars that carry high haz-
8 ard materials (as defined in section 11(g) of
9 this Act;

10 (C) techniques to transfer hazardous mate-
11 rials from rail cars that are damaged or other-
12 wise represent an unreasonable risk to human
13 life or public safety;

14 (6) other projects recommended in the report
15 required by section 2.

16 (b) COORDINATION WITH OTHER RESEARCH INITIA-
17 TIVES.—The Under Secretary of Homeland Security for
18 Border and Transportation Security shall ensure that the
19 research and development program authorized by this sec-
20 tion is coordinated with other research and development
21 initiatives at the Department and the Department of
22 Transportation. The Under Secretary of Homeland Secu-
23 rity for Border and Transportation Security shall carry
24 out any research and development project authorized by
25 this section through a reimbursable agreement with the

1 Secretary of Transportation if the Secretary of
2 Transportation—

3 (1) is already sponsoring a research and devel-
4 opment project in a similar area; or

5 (2) has a unique facility or capability that
6 would be useful in carrying out the project.

7 (c) ACCOUNTABILITY.—The Under Secretary shall
8 adopt necessary procedures, including audits, to ensure
9 that grants made under this section are expended in ac-
10 cordance with the purposes of this Act and the priorities
11 and other criteria developed by the Under Secretary.

12 (d) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated to the Under Secretary
14 of Homeland Security for Border and Transportation Se-
15 curity \$50,000,000 in each of fiscal years 2005 and 2006
16 to carry out the purposes of this section. Amounts appro-
17 priated pursuant to this subsection shall remain available
18 until expended.

19 **SEC. 14. WELDED RAIL AND TANK CAR SAFETY IMPROVE-**
20 **MENTS.**

21 (a) TRACK STANDARDS.—Within 90 days after the
22 date of enactment of this Act, the Federal Railroad Ad-
23 ministration shall—

24 (1) require each track owner using continuous
25 welded rail track to include procedures (in its proce-

1 dures filed with the Administration pursuant to sec-
 2 tion 213.119 of title 49, Code of Federal Regula-
 3 tions) to improve the identification of cracks in rail
 4 joint bars;

5 (2) instruct Administration track inspectors to
 6 obtain copies of the most recent continuous welded
 7 rail programs of each railroad within the inspectors'
 8 areas of responsibility and require that inspectors
 9 use those programs when conducting track inspec-
 10 tions; and

11 (3) establish a program to periodically review
 12 continuous welded rail joint bar inspection data from
 13 railroads and Administration track inspectors and,
 14 whenever the Administration determines that it is
 15 necessary or appropriate, require railroads to in-
 16 crease the frequency or improve the methods of in-
 17 spection of joint bars in continuous welded rail.

18 (b) TANK CAR STANDARDS.—The Federal Railroad
 19 Administration shall—

20 (1) within 1 year after the date of enactment
 21 of this Act, validate the predictive model it is devel-
 22 oping to quantify the relevant dynamic forces acting
 23 on railroad tank cars under accident conditions; and

24 (2) within 18 months after the date of enact-
 25 ment of this Act, initiate a rulemaking to develop

1 and implement appropriate design standards for
2 pressurized tank cars.

3 (c) OLDER TANK CAR IMPACT RESISTANCE ANAL-
4 YSIS AND REPORT.—Within 2 years after the date of en-
5 actment of this Act, the Federal Railroad Administration
6 shall—

- 7 (1) conduct a comprehensive analysis to deter-
8 mine the impact resistance of the steels in the shells
9 of pressure tank cars constructed before 1989; and
10 (2) transmit a report to the Senate Committee
11 on Commerce, Science, and Transportation and the
12 House of Representatives Committee on Transpor-
13 tation and Infrastructure with recommendations for
14 measures to eliminate or mitigate the risk of cata-
15 strophic failure.

16 **SEC. 15. NORTHERN BORDER RAIL PASSENGER REPORT.**

17 Within 180 days after the date of enactment of this
18 Act, the Under Secretary of Homeland Security for Bor-
19 der and Transportation Security, in consultation with the
20 heads of other appropriate Federal departments and agen-
21 cies and the National Railroad Passenger Corporation,
22 shall transmit a report to the Senate Committee on Com-
23 merce, Science, and Transportation and the House of Rep-
24 resentatives Committee on Transportation and Infrastruc-
25 ture that contains—

1 (1) a description of the current system for
2 screening passengers and baggage on passenger rail
3 service between the United States and Canada;

4 (2) an assessment of the current program to
5 provide preclearance of airline passengers between
6 the United States and Canada as outlined in “The
7 Agreement on Air Transport Preclearance between
8 the Government of Canada and the Government of
9 the United States of America”, dated January 18,
10 2001;

11 (3) an assessment of the current program to
12 provide preclearance of freight railroad traffic be-
13 tween the United States and Canada as outlined in
14 the “Declaration of Principle for the Improved Secu-
15 rity of Rail Shipments by Canadian National Rail-
16 way and Canadian Pacific Railway from Canada to
17 the United States”, dated April 2, 2003;

18 (4) information on progress by the Department
19 of Homeland Security and other Federal agencies to-
20 wards finalizing a bilateral protocol with Canada
21 that would provide for preclearance of passengers on
22 trains operating between the United States and Can-
23 ada;

24 (5) a description of legislative, regulatory,
25 budgetary, or policy barriers within the United

1 States Government to providing pre-screened pas-
 2 senger lists for rail passengers travelling between the
 3 United States and Canada to the Department of
 4 Homeland Security;

5 (6) a description of the position of the Govern-
 6 ment of Canada and relevant Canadian agencies
 7 with respect to preclearance of such passengers; and

8 (7) a draft of any changes in existing Federal
 9 law necessary to provide for pre-screening of such
 10 passengers and providing pre-screened passenger
 11 lists to the Department of Homeland Security.

12 **SEC. 16. REPORT REGARDING IMPACT ON SECURITY OF**
 13 **TRAIN TRAVEL IN COMMUNITIES WITHOUT**
 14 **GRADE SEPARATION.**

15 (a) STUDY.—The Secretary of Homeland Security
 16 shall, in consultation with State and local government offi-
 17 cials, conduct a study on the impact of blocked highway-
 18 railroad grade crossings on the ability of emergency re-
 19 sponders, including ambulances and police, fire, and other
 20 emergency vehicles, to perform public safety and security
 21 duties in the event of a terrorist attack.

22 (b) REPORT.—Not later than 1 year after the date
 23 of enactment of this Act, the Secretary of Homeland Secu-
 24 rity shall submit a report to the Committee on Transpor-
 25 tation and Infrastructure of the House of Representatives

1 and the Committee on Commerce, Science, and Transpor-
 2 tation of the Senate on the findings of the study conducted
 3 under subsection (a) and recommendations for reducing
 4 the impact of blocked crossings on emergency response.

5 **SEC. 17. WHISTLEBLOWER PROTECTION PROGRAM.**

6 (a) IN GENERAL.—Subchapter A of chapter 201 of
 7 title 49, United States Code, is amended by inserting after
 8 section 20115 the following:

9 **“§ 20116. Whistleblower protection for rail security**
 10 **matters**

11 “(a) DISCRIMINATION AGAINST EMPLOYEE.—No rail
 12 carrier engaged in interstate or foreign commerce may dis-
 13 charge a railroad employee or otherwise discriminate
 14 against a railroad employee because the employee (or any
 15 person acting pursuant to a request of the employee)—

16 (1) provided, caused to be provided, or is about
 17 to provide or cause to be provided, to the employer
 18 or the Federal Government information relating to a
 19 perceived threat to security; or

20 “(2) provided, caused to be provided, or is
 21 about to provide or cause to be provided, testimony
 22 before Congress or at any Federal or State pro-
 23 ceeding regarding a perceived threat to security; or

24 “(3) refused to violate or assist in the violation
 25 of any law, rule or regulation related to rail security.

1 “(b) DISPUTE RESOLUTION.—A dispute, grievance,
 2 or claim arising under this section is subject to resolution
 3 under section 3 of the Railway Labor Act (45 U.S.C. 153).
 4 In a proceeding by the National Railroad Adjustment
 5 Board, a division or delegate of the Board, or another
 6 board of adjustment established under section 3 to resolve
 7 the dispute, grievance, or claim the proceeding shall be
 8 expedited and the dispute, grievance, or claim shall be re-
 9 solved not later than 180 days after it is filed. If the viola-
 10 tion is a form of discrimination that does not involve dis-
 11 charge, suspension, or another action affecting pay, and
 12 no other remedy is available under this subsection, the
 13 Board, division, delegate, or other board of adjustment
 14 may award the employee reasonable damages, including
 15 punitive damages, of not more than \$20,000.

16 “(c) PROCEDURAL REQUIREMENTS.—Except as pro-
 17 vided in subsection (b), the procedure set forth in section
 18 42121(b)(2)(B) of this title, including the burdens of
 19 proof, applies to any complaint brought under this section.

20 “(d) ELECTION OF REMEDIES.—An employee of a
 21 railroad carrier may not seek protection under both this
 22 section and another provision of law for the same allegedly
 23 unlawful act of the carrier.

24 “(e) DISCLOSURE OF IDENTITY.—

1 “(1) Except as provided in paragraph (2) of
 2 this subsection, or with the written consent of the
 3 employee, the Secretary of Transportation may not
 4 disclose the name of an employee of a railroad car-
 5 rier who has provided information about an alleged
 6 violation of this section.

7 “(2) The Secretary shall disclose to the Attor-
 8 ney General the name of an employee described in
 9 paragraph (1) of this subsection if the matter is re-
 10 ferred to the Attorney General for enforcement.”.

11 (b) CONFORMING AMENDMENT.—The chapter anal-
 12 ysis for chapter 201 of title 49, United States Code, is
 13 amended by inserting after the item relating to section
 14 20115 the following:

“20116. Whistleblower protection for rail security matters.”.

Passed the Senate October 1, 2004.

Attest:

Secretary.

108TH CONGRESS
2D SESSION

S. 2273

AN ACT

To provide increased rail transportation security.